



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Mr. Mark T. Sokolow
City Attorney
City of League City
300 West Walker
League City, Texas 77573-3898

OR96-0096

Dear Mr. Sokolow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37628.

The City of League City (the "city") received a request for copies of all statements taken from the requestor's clients relating to a complaint against two city police officers. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.103 of the Government Code. You have submitted a representative sample of the documents requested.¹ We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551* (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

¹We note that the only submitted document that appears to be responsive is a statement from one of the requestor's clients. Consequently, we address only whether that document is excepted from disclosure under sections 552.103 and 552.108.

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). Here, we have a specific written demand for payment and a threat of suit from an attorney. Therefore, the city has established that litigation is reasonably anticipated. Further, the city has established that the requested document is related to the anticipated litigation. However, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the city may not withhold the statement of the requestor's client under section 552.103(a), as she has already seen or had access to this information.

You also claim that section 552.108(a) excepts the requested information from disclosure. Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). You have not established that there is any criminal investigation involved here.² Therefore, the city may not withhold the requested information under section 552.108(a).

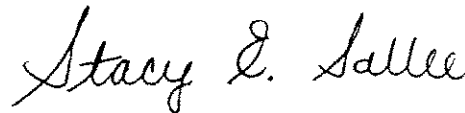
Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention.

²We note that, as the children are under the age of ten, the Family Code provisions concerning juvenile offenders do not apply to their conduct. Fam. Code § 51.02(1)(A).

Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. The requested document does not demonstrate on its face, nor do you explain, how releasing the statement of the requestor's client would unduly interfere with law enforcement. Therefore, the city may not withhold the requested statement under section 552.108(b).

As none of the exceptions you raise apply to the requested witness statement, the record must be released to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 37628

Enclosures: Submitted documents

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(w/o enclosures)